

REMARKS

Applicants respectfully request reconsideration of the present application in view of this response. Claims 1-10 are currently pending in the present application, and claims 1 and 8 are independent claims.

ALLOWABLE SUBJECT MATTER

Applicants acknowledge and thank the Examiner for the indication of the allowable subject matter set forth in claims 2 and 4-7.

RESPONSE TO ARGUMENTS

Applicants acknowledge the Examiner's withdrawal of the previous rejection of claims 1, 3, 8, 9, and 10.

PRIOR ART REJECTIONS

Claims Rejections under 35 U.S.C. §103(a)

Claims 1, 3, 8, 9, and 10 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Whitehead (U.S. Patent No. 6,157,616, hereinafter referred to as "Whitehead") in view of Persson et al. (U.S. Patent No. 6,028,851, hereinafter referred to as "Persson"). Applicants respectfully traverse this rejection.

Disqualification of Whitehead (U.S. Patent No. 6,157,616) As A

Prior Art Reference under 35 U.S.C. §103(c)

35 U.S.C. §103(c) recites:

(c) subject matter developed by another person, which qualifies as prior art only under one or more subsections e, f, and g of §102 of this title, shall not preclude patentability under this section where the subject matter in the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. (Emphasis added, see M.P.E.P. §2146).

Applicants respectfully assert that Whitehead (U.S. Patent No. 6,157,616) may only qualify as prior art under 35 U.S.C. §102(e). The undersigned hereby states that Whitehead and the claimed invention (as described by way of the example embodiments) were, at the time of invention, subject to an obligation of assignment to the same entity (Lucent Technologies, Inc.).

Therefore, Whitehead is disqualified as a prior art reference under 35 U.S.C. §103(c) and subsequently cannot be applied as part of a prior art rejection under 35 U.S.C. §103(a). As such, Applicants respectfully submit that the rejections under 35 U.S.C. §103(a) are moot.

CONCLUSION

In view of above remarks, reconsideration of the outstanding rejection and allowance of the pending claims is respectfully requested.

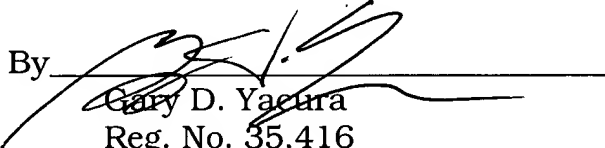
If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Andrew M. Waxman, Reg. No 56,007, at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, PLC

By


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